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1939

## OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

HERALD C. MANN  
ATTORNEY GENERAL

June 14, 1939

Hon. Tom Seay  
County Attorney  
Potter County  
Amarillo, Texas

Dear Sir:

Opinion No. 0-967

Re: Is the scheme of the theatre  
owner as described a violation  
of Texas lottery laws?

Your request for an opinion on the above  
stated question has been received by this department.

Your letter reads in part as follows:

"A theatre owner obtains a list of all  
of the automobile license numbers issued in  
his county, puts each such number on a separ-  
ate piece of paper and places all of the var-  
ious pieces of paper inscribed with such num-  
bers in a large container. Each week one of  
the papers is withdrawn from the container  
before the theatre audience and if the person  
whose license number is called happens to be  
present in the theatre, he receives a cash  
prize. Theatre patrons are not required to  
register in any manner and the only considera-  
tion required is that the person whose automo-  
bile license number is called be in the thea-  
tre when same is called."

Article 654 of the Penal Code reads as follows:

"If any person shall establish a lottery  
or dispose of any estate, real or personal, by  
lottery, he shall be fined not less than one  
hundred nor more than one thousand dollars; or  
if any person shall sell, offer for sale or  
keep for sale any ticket or part ticket in any

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lottery, he shall be fined not less than ten nor more than fifty dollars."

We quote from Texas Jurisprudence, Vol. 28, page 409 as follows:

"The term 'lottery' has no technical signification in the law, and since our statute does not provide a definition, its meaning must be determined from popular usage. According to that test, a lottery is a scheme for the distribution of prizes by lot or chance among those who have paid or agreed to pay a consideration for the right to participate therein, or the distribution itself."

The court in the case of *Feathershorne vs. Independent Service Station Association*, 10 SW 2nd 124 defined a lottery as follows:

"A lottery for all practical purposes may be defined as any scheme for the distribution of prizes, by lot or chance, where one on paying money or giving other thing of value to another obtains a token which entitles him to receive a larger or smaller value or nothing, as some formula or chance may determine."

The Federal Circuit Court of Appeals in the case of *Peek vs. United States*, 61 F. 2nd 973, has given a lottery the following definition:

"A scheme for the distribution of prizes or things of value by lot or chance among persons who have paid or agreed to pay a valuable consideration for the chance to obtain a prize. A scheme by which a result is reached by some action or means taken, in which results man's choice or will has no part, nor can human reason,..... sagacity or design enable him to know or

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determine....until the same has been accomplished."

The following have been held to be lotteries:

Punch boards; slot or vending machine; the sale of boxes of candy, which contain prizes; suit clubs, that is, clubs formed by tailors for the distribution of clothes by chance; and various games in mechanical nature.

In the case, City of Wink vs. Griffith Amusement Company, 100 SW 2nd 695, it was held that the necessary elements of a lottery are:

"Offering of a prize, award of prize by chance, and giving as consideration for opportunity to win prize."

In the case of Griffith Amusement Company, vs. Morgan, 98 SW 2nd 844, it was held that the elements essential to constitute a lottery are a prize in money or thing of value, distribution by chance and payment, either directly or indirectly, of a valuable consideration for the chance to win the prize.

In the cases of State vs. Randle, 41 Tex. 296 and Holoman vs. State, 47 SW 850 it was held that any scheme for the distribution of prizes by chance is a lottery.

In view of the foregoing authorities, you are respectively advised that it is the opinion of this department that the operation of the above described scheme is a violation of the lottery laws of this state.

Trusting that the foregoing answers your inquiry, we remain

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *Ardell Williams*

Ardell Williams  
Assistant



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APPROVED:

*Frederic B. Mann*  
ATTORNEY GENERAL OF TEXAS